

AMENDED IN ASSEMBLY MAY 29, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 325

Introduced by Assembly Member Alejo
(Coauthor: Assembly Member Ammiano)

February 13, 2013

An act to amend Sections 65009, 65589.3, and 65755 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 325, as amended, Alejo. Land use and planning: cause of actions: time limitations.

(1) The Planning and Zoning Law requires an action or proceeding against local zoning and planning decisions of a legislative body to be commenced and the legislative body to be served within a year of accrual of the cause of action, if it meets certain requirements. Where the action or proceeding is brought in support of, or to encourage or facilitate the development of, housing that would increase the community's supply of affordable housing, a cause of action accrues 60 days after *a certain* notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first.

This bill would authorize the notice to be filed any time within 3 years after ~~a specified~~ *an action taken pursuant to existing law* ~~certain laws~~, *but would set a 270-day period for notice with respect to an adopted or revised housing element that is found to substantially comply with law. This bill would also establish a 6-month limitations period for the commencement of an action or proceeding arising from a notice subject to the 270-day period.* The bill would declare the intent of the Legislature ~~that its provisions~~ *to modify a specified court opinion.* The

bill would also provide that in ~~that specified~~ *an* action or proceeding *subject to a one-year or 6-month limitations period*, no remedy pursuant to specified provisions of law *shall* abrogate, impair, or otherwise interfere with the full exercise of the rights and protections granted to a tentative map application or a developer, as prescribed.

(2) The Planning and Zoning Law establishes a rebuttable presumption, in any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, of the validity of a housing element or amendment if the Department of Housing and Community Development has found that the element or amendment substantially complies with specified provisions of existing law.

This bill would provide in any action brought against a city, county, or city and county to challenge the adequacy of a housing element, if a court finds that the adopted housing element or amended housing element for the current planning period substantially complies with specified provisions, that the element or amendment be deemed to satisfy any condition of a state-administered housing grant program requiring a department finding of housing element compliance.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in enacting
2 Section 2 of this act to modify the court's opinion in Urban Habitat
3 Program v. City of Pleasanton (2008) 164 Cal.App.4th 1561, with
4 respect to the interpretation of Section 65009 of the Government
5 Code.

6 SEC. 2. Section 65009 of the Government Code is amended
7 to read:

8 65009. (a) (1) The Legislature finds and declares that there
9 currently is a housing crisis in California and it is essential to
10 reduce delays and restraints upon expeditiously completing housing
11 projects.

12 (2) The Legislature further finds and declares that a legal action
13 or proceeding challenging a decision of a city, county, or city and
14 county has a chilling effect on the confidence with which property
15 owners and local governments can proceed with projects. Legal
16 actions or proceedings filed to attack, review, set aside, void, or
17 annul a decision of a city, county, or city and county pursuant to

1 this division, including, but not limited to, the implementation of
2 general plan goals and policies that provide incentives for
3 affordable housing, open-space and recreational opportunities, and
4 other related public benefits, can prevent the completion of needed
5 developments even though the projects have received required
6 governmental approvals.

7 (3) The purpose of this section is to provide certainty for
8 property owners and local governments regarding decisions made
9 pursuant to this division.

10 (b) (1) In an action or proceeding to attack, review, set aside,
11 void, or annul a finding, determination, or decision of a public
12 agency made pursuant to this title at a properly noticed public
13 hearing, the issues raised shall be limited to those raised in the
14 public hearing or in written correspondence delivered to the public
15 agency prior to, or at, the public hearing, except where the court
16 finds either of the following:

17 (A) The issue could not have been raised at the public hearing
18 by persons exercising reasonable diligence.

19 (B) The body conducting the public hearing prevented the issue
20 from being raised at the public hearing.

21 (2) If a public agency desires the provisions of this subdivision
22 to apply to a matter, it shall include in any public notice issued
23 pursuant to this title a notice substantially stating all of the
24 following: "If you challenge the (nature of the proposed action)
25 in court, you may be limited to raising only those issues you or
26 someone else raised at the public hearing described in this notice,
27 or in written correspondence delivered to the (public entity
28 conducting the hearing) at, or prior to, the public hearing."

29 (3) The application of this subdivision to causes of action
30 brought pursuant to subdivision (d) applies only to the final action
31 taken in response to the notice to the city or clerk of the board of
32 supervisors. If no final action is taken, then the issue raised in the
33 cause of action brought pursuant to subdivision (d) shall be limited
34 to those matters presented at a properly noticed public hearing or
35 to those matters specified in the notice given to the city or clerk
36 of the board of supervisors pursuant to subdivision (d), or both.

37 (c) (1) Except as provided in subdivision (d), no action or
38 proceeding shall be maintained in any of the following cases by
39 any person unless the action or proceeding is commenced and

1 service is made on the legislative body within 90 days after the
2 legislative body's decision:

3 (A) To attack, review, set aside, void, or annul the decision of
4 a legislative body to adopt or amend a general or specific plan.
5 This paragraph does not apply where an action is brought based
6 upon the complete absence of a general plan or a mandatory
7 element thereof, but does apply to an action attacking a general
8 plan or mandatory element thereof on the basis that it is inadequate.

9 (B) To attack, review, set aside, void, or annul the decision of
10 a legislative body to adopt or amend a zoning ordinance.

11 (C) To determine the reasonableness, legality, or validity of any
12 decision to adopt or amend any regulation attached to a specific
13 plan.

14 (D) To attack, review, set aside, void, or annul the decision of
15 a legislative body to adopt, amend, or modify a development
16 agreement. An action or proceeding to attack, review, set aside,
17 void, or annul the decisions of a legislative body to adopt, amend,
18 or modify a development agreement shall only extend to the
19 specific portion of the development agreement that is the subject
20 of the adoption, amendment, or modification. This paragraph
21 applies to development agreements, amendments, and
22 modifications adopted on or after January 1, 1996.

23 (E) To attack, review, set aside, void, or annul any decision on
24 the matters listed in Sections 65901 and 65903, or to determine
25 the reasonableness, legality, or validity of any condition attached
26 to a variance, conditional use permit, or any other permit.

27 (F) Concerning any of the proceedings, acts, or determinations
28 taken, done, or made prior to any of the decisions listed in
29 subparagraphs (A), (B), (C), (D), and (E).

30 (2) In the case of an action or proceeding challenging the
31 adoption or revision of a housing element pursuant to this
32 subdivision, the action or proceeding may, in addition, be
33 maintained if it is commenced and service is made on the
34 legislative body within 60 days following the date that the
35 Department of Housing and Community Development reports its
36 findings pursuant to subdivision (h) of Section 65585.

37 (d) (1) ~~An~~ Except as provided in paragraph (2), an action or
38 proceeding shall be commenced and the legislative body served
39 within one year after the accrual of the cause of action as provided

in this subdivision, if the action or proceeding meets both of the following requirements:

(A) It is brought in support of or to encourage or facilitate the development of housing that would increase the community's supply of housing affordable to persons and families with low or moderate incomes, as defined in Section 50079.5 of the Health and Safety Code, or with very low incomes, as defined in Section 50105 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. This subdivision is not intended to require that the action or proceeding be brought in support of or to encourage or facilitate a specific housing development project.

(B) It is brought with respect to actions taken pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3, Section 65863.6, or Chapter 4.2 (commencing with Section 65913), or to challenge the adequacy of an ordinance adopted pursuant to Section 65915.

(2) An action or proceeding challenging the adoption or revision of a housing element that the Department of Housing and Community Development has found to substantially comply with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 shall be commenced, and the legislative body shall be served, within six months after the accrual of the cause of action as provided in this subdivision.

~~(2)~~

(3) (A) A cause of action brought pursuant to this subdivision shall not be maintained until 60 days have expired following notice to the city or clerk of the board of supervisors by the party bringing the cause of action, or his or her representative, specifying the deficiencies of the general plan, specific plan, or zoning ordinance. A cause of action brought pursuant to this subdivision shall accrue 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first. ~~This~~

(B) *This notice may be filed at any time within three years after an action described in subparagraph (B) of paragraph (1), except that, if the notice specifies a deficiency in an adopted or revised housing element that has been found to substantially comply with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3, the notice may be filed at any time within 270 days after the action to revise or adopt the housing element.* ~~A~~

1 (4) A notice or cause of action brought by one party pursuant
2 to this subdivision shall not bar filing of a notice and initiation of
3 a cause of action by any other party.

4 ~~(3)~~

5 (5) After the adoption of a housing element covering the current
6 planning period, no action shall be filed pursuant to this subdivision
7 to challenge a housing element covering a prior planning period.

8 (e) Upon the expiration of the time limits provided for in this
9 section, all persons are barred from any further action or
10 proceeding.

11 (f) Notwithstanding Sections 65700 and 65803, or any other
12 provision of law, this section shall apply to charter cities.

13 (g) Except as provided in subdivision (d), this section shall not
14 affect any law prescribing or authorizing a shorter period of
15 limitation than that specified herein.

16 (h) Except as provided in paragraph (4) of subdivision (c), this
17 section shall be applicable to those decisions of the legislative
18 body of a city, county, or city and county made pursuant to this
19 division on or after January 1, 1984.

20 SEC. 3. Section 65589.3 of the Government Code is amended
21 to read:

22 65589.3. (a) In any action filed on or after January 1, 1991,
23 taken to challenge the validity of a housing element, there shall
24 be a rebuttable presumption of the validity of the element or
25 amendment if, pursuant to Section 65585, the department has found
26 that the element or amendment substantially complies with the
27 requirements of this article.

28 (b) In any action brought against a city, county, or city and
29 county to challenge the adequacy of a housing element, if a court
30 finds that the adopted housing element or amended housing element
31 for the current planning period substantially complies with all of
32 the requirements of this article, including, but not limited to, the
33 requirements for public participation set forth in paragraph (7) of
34 subdivision (c) of Section 65583, the element or amendment shall
35 be deemed to satisfy any condition of a state-administered housing
36 grant program requiring a department finding that the housing
37 element substantially complies with the requirements of this article.

38 SEC. 4. Section 65755 of the Government Code is amended
39 to read:

65755. (a) The court shall include, in the order or judgment rendered pursuant to Section 65754, one or more of the following provisions for any or all types or classes of developments or any or all geographic segments of the city, county, or city and county until the city, county, or city and county has substantially complied with the requirements of Article 5 (commencing with Section 65300):

(1) Suspend the authority of the city, county, or city and county pursuant to Division 13 (commencing with Section 17910) of the Health and Safety Code, to issue building permits, or any category of building permits, and all other related permits, except that the city, county, or city and county shall continue to function as an enforcement agency for review of permit applications for appropriate codes and standards compliance, prior to the issuance of building permits and other related permits for residential housing for that city, county, or city and county.

(2) Suspend the authority of the city, county, or city and county, pursuant to Chapter 4 (commencing with Section 65800) to grant any and all categories of zoning changes, variances, or both.

(3) Suspend the authority of the city, county, or city and county, pursuant to Division 2 (commencing with Section 66410), to grant subdivision map approvals for any and all categories of subdivision map approvals.

(4) Mandate the approval of all applications for building permits, or other related construction permits, for residential housing where a final subdivision map, parcel map, or plot plan has been approved for the project, where the approval will not impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element, and where the permit application conforms to all code requirements and other applicable provisions of law except those zoning laws held to be invalid by the final court order, and changes to the zoning ordinances adopted after such final court order which were enacted for the purpose of preventing the construction of a specific residential development.

(5) Mandate the approval of any or all final subdivision maps for residential housing projects which have previously received a tentative map approval from the city, county, or city and county pursuant to Division 2 (commencing with Section 66410) when the final map conforms to the approved tentative map, the tentative map has not expired, and where approval will not impact on the

1 ability of the city, county, or city and county to properly adopt and
2 implement an adequate housing element.

3 (6) Mandate that notwithstanding the provisions of Sections
4 66473.5 and 66474, any tentative subdivision map for a residential
5 housing project shall be approved if all of the following
6 requirements are met:

7 (A) The approval of the map will not significantly impair the
8 ability of the city, county, or city and county to adopt and
9 implement those elements or portions thereof of the general plan
10 which have been held to be inadequate.

11 (B) The map complies with all of the provisions of Division 2
12 (commencing with Section 66410), except those parts which would
13 require disapproval of the project due to the inadequacy of the
14 general plan.

15 (C) The approval of the map will not affect the ability of the
16 city, county, or city and county to adopt and implement an adequate
17 housing element.

18 (D) The map is consistent with the portions of the general plan
19 not found inadequate and the proposed revisions, if applicable, to
20 the part of the plan held inadequate.

21 (b) Any order or judgment of a court which includes the
22 remedies described in paragraphs (1), (2), or (3) of subdivision (a)
23 shall exclude from the operation of that order or judgment any
24 action, program, or project required by law to be consistent with
25 a general or specific plan if the court finds that the approval or
26 undertaking of the action, program, or project complies with both
27 of the following requirements:

28 (1) That it will not significantly impair the ability of the city,
29 county, or city and county to adopt or amend all or part of the
30 applicable plan as may be necessary to make the plan substantially
31 comply with the requirements of Article 5 (commencing with
32 Section 65300) in the case of a general plan, or Article 8
33 (commencing with Section 65450) in the case of a specific plan.

34 (2) That it is consistent with those portions of the plan
35 challenged in the action or proceeding and found by the court to
36 substantially comply with applicable provisions of law.

37 The party seeking exclusion from any order or judgment of a
38 court pursuant to this subdivision shall have the burden of showing
39 that the action, program, or project complies with paragraphs (1)
40 and (2).

1 (c) Notwithstanding Section 65754.4 or subdivisions (a) and
2 (b), in any action or proceeding brought pursuant to subdivision
3 (d) of Section 65009, no remedy pursuant to this section or
4 injunction pursuant to Section 65754.5 shall abrogate, impair, or
5 otherwise interfere with the full exercise of the rights and
6 protections granted to (1) an applicant for a tentative map pursuant
7 to Section 66474.2, or (2) a developer pursuant to Sections 65866
8 and 66498.1.

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